



# Commonwealth of Massachusetts State Ethics Commission

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**SUFFOLK, ss.**

**COMMISSION ADJUDICATORY  
DOCKET NO. 624**

## **IN THE MATTER OF JAMES FOSTER**

### **DISPOSITION AGREEMENT**

This Disposition Agreement is entered into between the State Ethics Commission and James Foster pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in Superior Court, pursuant to G.L. c. 268B, §4(j).

On October 18, 2000, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Foster. The Commission has concluded its inquiry and, on April 10, 2001, found reasonable cause to believe that Foster violated G.L. c. 268A, §23(b)(2) and authorized the initiation of adjudicatory proceedings. On May 23, 2001, the Commission's Enforcement Division issued an Order to Show Cause. Foster answered on July 3, 2001, denying that he had violated the law and setting forth affirmative defenses. On October 9, 2002, the parties submitted a Joint Motion to Dismiss based on this disposition agreement rather than having a hearing on the charges and affirmative defenses. The Commission approved that motion on October 23, 2002.

The Commission and Foster now agree to the following findings of fact and conclusions of law:

#### *Findings of Fact*

1. At all relevant times, Foster was employed by the Milton School Department as the administrator of building and grounds. As such, he was a municipal employee as that term is defined in G.L. c. 268A, §1(g).
2. The school department had an account at Johnson Motor Parts to purchase auto parts for school department vehicles. Foster, as administrator of building grounds, had access and authority to use that account to purchase auto parts for such vehicles. Foster did not have authority to purchase auto parts for his or his family's personal vehicles.
3. Foster used the school department account at Johnson Motor Parts to charge auto parts in the total amount of \$1097.90 for vehicles owned by himself and/or family members as follows:
  - (a) for a Dodge Caravan in the approximate amount of \$100.91 on or about October 3, 1996;
  - (b) for a Buick Riviera in the approximate amount of \$160.57 on or about October 15, 1996;
  - (c) for a Buick Riviera in the approximate amount of \$129.72 on or about October 17, 1996;
  - (d) for a Buick Riviera in the approximate amount of \$66.12 on or about December 4, 1996;
  - (e) for a Chrysler New Yorker in the approximate amount of \$395.88 on or about January 30, 1997;
  - (f) for a Dodge Caravan and a Ford Explorer in the approximate amount of \$80.75 on or about July 10, 1998; and

(g) for a Pontiac Firebird in the approximate amount of \$163.95 on or about October 8, 1998.

#### Conclusions of Law

4. General Laws chapter 268A, §23(b)(2) prohibits a municipal employee from knowingly, or with reason to know, using or attempting to use his official position to secure for himself or others unwarranted privileges or exemptions which are of substantial value and which are not properly available to similarly situated individuals.

5. By charging to the school account auto parts for vehicles owned by himself and/or his family, Foster knowingly or with reason to know used his official position to secure for himself or others unwarranted privileges of substantial value not properly available to similarly situated individuals. By doing so, Foster violated G.L. c. 268A, §23(b)(2) on each of the above-described seven occasions.

#### Resolution

In view of the foregoing violation of G.L. c. 268A by Foster, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Foster:

(1) that Foster pay to the Commission the sum of \$2,000 as a civil penalty for his conduct in violating G.L. c. 268A, §23(b)(2);<sup>1/ 2/</sup> and

(2) that Foster waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

**DATE: November 7, 2002**

<sup>1/</sup>After an investigation into this matter, Foster reimbursed the town for the auto parts he charged to the town account. Therefore, no further restitution is sought.

<sup>2/</sup>Criminal charges related to these and other matters were brought by the District Attorney's Office. The parties have since entered into a resolution.